

British Colonies vol 7

THE

Right, Interest, and Duty,

OF

GOVERNMENT,

As concerned in

THE AFFAIRS

OF THE

EAST INDIES.

The Case as stated and argument upon it as first
written, by GOVERNOR POWNALL, M. P.
in 1773, now revised.

LONDON,

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inc. 1773

THE
Right, Interest, and Duty

GOVERNMENT



THE EAST INDIA COMPANY

EAST INDIES

The East India Company
Printed by G. ALLEN, at the
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LONDON

THE
FOLLOWING TREATISE
IS MOST RESPECTFULLY DEDICATED
TO THE
SELECT COMMITTEE
OF THE
HOUSE OF COMMONS,
&c.
BY
AN OLD MEMBER OF THAT HOUSE
NOW NO LONGER A MEMBER.

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SELECT COMMITTEE

OF THE

HOUSE OF COMMONS

AND OLD MEMBERS OF THAT HOUSE

NOW NO LONGER A MEMBER

P R E F A C E.

THE following argument, upon the case therein stated, was first written in the latter end of the year 1772, and circulated amongst several friends, men of business, under an idea that the Administration of Government, meant to have taken up the affairs of the East India company, by some measure to be acted upon: and it was published in the beginning of the year 1773. In the course of the sessions of that year, Parliament passed “An act for establishing certain regulations for the better management of the affairs of the East India company, &c.” Government, in consequence of the regulations provided, and powers given to it, sent a governor general and Council; and established at Fort William a supreme court

court of judicature : But the whole measure was considered as an experiment to be tried in the interim, until his Majesty's ministers could be at leisure, and should be able, to prepare such a system for the establishment of the state, of the company; and of the poor people said to be conquered; as might be offered to Parliament for the final settlement of these rights, and an established system of government, for that great and important object.

After the passing of *that act of experiment*, I revised the following paper, and made the several additions which are now annexed to it :—Yet seeing that the world at large was not disposed, at that time, to enter into the question of right, or into the consideration of the measures which must be taken whenever it shall be decided; I did not at that time publish them, but put the papers in a drawer, where they

they have lain to this time, and might have lain to doom's-day.—Had I not at this juncture (1780) been desired to republish what I published in 1773, as by not now being in Parliament, I was supposed to have leisure to revise it.

As to my leisure I have much less now than I had, as I think I can dispose of my time much more profitably as a man, than I ever did in parliament as a politician; nor do I feel myself disposed to take up again matters of politicks, which are but matters of cabal amongst individuals; of faction amongst parties; and absolutely the mean while decided upon and decreed, *through a peculiar operation of predestination*, by ministers.

All therefore which I have done, is so far to accede to what has been desired as to send these papers, as they were

were written in 1773 to Mr. Almon, which he may, if he thinks it worth his while, insert and publish in a second edition.

T H E

RIGHT, INTEREST, &c.

THE exercise of the sovereignty of populous and extensive dominions in the East Indies, have come into the hands of the East India company; the revenues of these dominions are actually in the possession of this company; and in consequence of power arising from this exercise of sovereignty, and of influence from this possession of the revenues, the same company have as merchants, while they acted as sovereigns, carried on an absolute monopoly of the commerce of one of the richest manufacturing countries in the world.

The profits of this trade have been so great, that difficulty and embarrassment have arisen how to invest, or how bring home the balance of it.

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The revenues were so ample and abundant, that Lord Clive, in the year 1765, writes in these words to the directors of this company in England, "Your revenues, by means of this
 " new acquisition, will, as near as I can judge,
 " not fall far short for the ensuing year of 250
 " lacks of Sicca rupees, (including your former
 " possessions of Burdwan, &c.) Hereafter they
 " will at least amount to 20 or 30 lacks more.
 " Your civil and military expences in time of
 " peace, can never exceed 60 lacks of rupees;
 " the Nabob's allowances are already reduced
 " to 42 lacks, and the tribute to the king is fix-
 " ed at 26; so that there will be remaining a
 " clear gain to the company of 122 lacks of
 " Sicca rupees, or 1,650,900*l.* sterling; which
 " will defray all the expences of the invest-
 " ments, furnish the whole of the China trea-
 " sure, answer all the demands of your other
 " settlements in India, and leave a considerable
 " balance in your treasury besides. In time of
 " war when the country may be subject to the
 " incursions of bodies of cavalry, we shall,
 " notwithstanding, be able to collect a sufficient
 " sum for our civil and military exigencies, and
 " likewise for our investments; because a
 " very rich part of the Bengal and Bahar do-
 " minions are situated to the eastward of the
 " Ganges, where we never can be invaded.
 " What I have given you, is a real not imagina-
 " ry state of your revenues; and you may be
 " assured they will not fall short of my com-
 " putation."

If the public enquires after the causes, why the company is under any difficulties notwithstanding this state, they are told of the want of wisdom and power in the company at home; of mischievous errors in the directors; of factions in general courts; of ungovernable disobedience in their servants abroad; of peculation of public treasure; of frauds in expenditures; of falsehoods in accounts; of plundering, pillaging, and rapine, both public and private; of rapacious extortions in trade, which have ruined the commerce and manufactures of the country; of tyranny, in every exertion of that cruel spirit, which has absolutely destroyed the country itself: all this to the shame and opprobrium of the nation may be true; yet these are but natural, I had almost said necessary effects of a prime original evil which they derive from. The first origin of the evil is, *that the merchant is become the sovereign*; that a trading company have in their hands the exercise of a sovereignty, which that company by its direction within the realm is not adequate to, and with which its servants (the governors and others, as now constituted without the realm) should not be trusted. The suffering a trading company of merchants, so circumstanced and so constituted, to assume the possession of, and to exercise (however acquired and possessed) such sovereignty in a manner unobserved, unregulated by, and independent of the supreme sovereignty of the state, is the first error. This is the original evil: and the man-
ner

ner in which it hath been exercised is only a natural and certain mischief derived from it.

But be the conduct of persons interested in the company and its affairs still such as it has been; be the conduct of men in power what it will; be the conduct of their opponents what it may; as to the Indian affairs; the feelings of mankind in general are at last roused to a state of alarm; they apprehend danger to the state. People now at last begin to view those Indian affairs, not simply as beneficial appendages connected to the Empire; but from the participation of their revenues being wrought into the very composition and frame of our finances; from the commerce of that country being indissolubly interwoven with our whole system of commerce; from the intercommunion of funded property between the company and the state—people in general from these views begin to see such an union of interest, such a co-existence between the two, that they tremble with horror even at the imagination of the downfall of this Indian part of our system; knowing that it must necessarily involve with its fall, the ruin of the whole edifice of the British empire.

It seems to me that it is a matter of the utmost consequence to the nation, that these matters should be coolly, deliberately, and dispassionately discussed. It appears to me, that in general courts of the company where interested animosity is the spirit, that in other great assemblies
where

where these matters are treated only as the instruments of party, they will never be so discussed. I own, from what I have had occasion to observe, I have conceived an opinion, that those persons alone who are no ways attached by interest to this business, who are by no means connected with any party that may hope to derive some use from it, are the most likely to examine it in that line of inquiry in which the public is concerned. It is not in the whirlwind of contention; it is not in the thunder of debate, that truth is heard: it is in the still small voice, in quiet abstracted deliberation that it will be found.

At this crisis therefore, *in this interval between report and consideration*, I, an uninterested, unconnected individual bystander, without any possible views of interest, with a fixed determination of taking no part in debate, with almost a certain assurance of disapprobation from all sides, and from all parties on all sides, will state the case, as it arises from and is founded upon the same principles which I have had occasion to explain in cases of the like nature.

I will endeavour to explain to the public, the relation and precise predicament in which these foreign possessions, and in which the exercise of sovereignty over them, stands with the supreme government of Great Britain. From this state of the case I will endeavour to point out what the government of Great Britain has
a right

a right to do, what he ought to do, and what it can do.

Previous to all considerations of the possessions of this company, and of the exercise of that sovereignty which has come into its hands, the first immediate attention is due to its existence as founded on its capital trading stock. This consideration government hath wisely taken up, and hath done therein what was necessary and what will be effectual to that end : The edifice is now secured and founded on a base which will support it,

Whether now thus established it shall become, as a part of one organized whole, as a part of our system of empire, an aid in power and revenue ; or whether as an independant unannexed object of commerce, a drain upon our force and strength ; must depend upon the regulations, upon the measures, which government shall take concerning it.

To enable the public to judge how far government hath a right to interpose, how far it ought to interpose ; they should first consider the predicament under which this trading company hath a right to go forth of the realm ; to export British subjects ; to trade and make settlements *in partibus exteris* ; to possess lands and territories ; and to govern its settlements, factories, and so forth.

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When this matter is traced back to its first spring and movement, and thence again deduced through the various succeeding processes of its operations and existence; it will be found to stand upon the same grounds and base; to have moved in the same line as all other like emigrations and settlements *in partibus cæteris* have done.

There are the like powers of incorporation, with rights of the same nature; the like powers of acquiring, purchasing, and possessing lands and hereditaments within the realm; and the like rights of property and joint stock; the like rights of direction and government; the like permission of emigration and of transporting emigrants; the like powers of trading, making settlements, and of establishing factories *in partibus exteris*, within defined bounds; the like authority to build forts and otherwise fortify their possessions; to make war and peace with the natives, not Christians, where they shall settle; the like powers of establishing government, and of appointing governors and all necessary officers, civil and military, as have been given to all other colonists and emigrants.

Whoever will compare the charters of the one and of the other, clause by clause, word by word, will find this unvarying familiarity extend through the whole.

Whoever

Whoever attentively considers these charters, will find these powers granted not only without reference had, but previous to grants made by government of territorial possessions. In the charter to the Virginia Company, granted in 1611-12, is a clause subsequent to clauses granting all the like powers as here before mentioned, in the words following. " And finally we
 " do for us, our heirs and successors, grant and
 " agree, to and with the said Sir Thomas Gates,
 " Sir George Somers, Richard Harkluit, and
 " Edward Maria Wingfield, and all others of
 " the said first colony; that we, our heirs and
 " successors, *upon petition in that behalf made,*
 " shall, by letters patent under our great seal of
 " England, give and grant unto such persons,
 " their heirs and assigns, as the council of that
 " colony, or the most part of them, shall for
 " that purpose nominate and assign, all the lands,
 " tenements, and hereditaments which shall be
 " within the precincts limited for that colony,
 " as is aforesaid, *to be holden of us,* our heirs
 " and successors, as of our manor of East
 " Greenwich in the county of Kent, in free and
 " common socage only, and not *in capite.*"

These colonists therefore, speaking of them in general, had a power of making and acquiring, and of lawfully holding and possessing colonies, plantations, settlements, and factories, *in partibus cæteris*, within the bounds prescribed to them for trading and settling, without any reference had to territorial grants—and by virtue

tue of this lawful power they had an implied claim of right to territorial grants of such lands or territories as they may have acquired under these powers, where such could be lawfully granted.

The East India company, speaking of it in particular, had this power of acquiring, holding, and possessing "ports, islands, plantations, castles, forts, factories, and territories" within bounds defined by their charter, and consequently this implied claim of right to grants of such—Which, their charter of 1661 says, shall be immediately and from henceforth under the power and command of the said governor and company, their successors and assigns.—Other charters give them power to purchase, or lawfully acquire such.—The parliament in 1692 (see the journals) admits the company's claim of property in their forts, towns and territories in India.—At the union of the two companies, the old company, before the surrender of its charter, conveys to the new "all ports, islands, plantations, territories, castles, forts, fortifications, manors, lordships, messuages, lands, tenements, hereditaments, rent, and revenues." This conveyance and transferring of property, this lodging of it in the new company, is recognized by the crown, who becomes a party to the deed tripartite, by which this conveyance and settlement is made: and that the united company are *ipso facto*, and of right, capable of acquiring, and holding forts, factories, plantations, &c. in

the same manner as the old company was, the tripartite covenant is a proof; for it makes and prescribes regulations for all such as are, *or shall be possessed by them*, within the limits of their charter.

Now all these rights of possession, and all these possessions, are held without any reference had to any territorial grants of the same, other than the general powers of settling and planting colonies within certain defined boundaries; which general powers of possessions are thus qualified, "the sovereign right, power, and dominion over all the said forts, places, and plantations to the king, his heirs, and successors being always reserved," as is expressly stated in the charter of the tenth of king William.

Thus stands the case of all that sort of property, and of those possessions of the East India company, which is specifically described in the deed tripartite, whereby that company was framed, united, and constituted.

This is the case of all such settlements as may be made, under the like powers of emigration and settlement, in countries where the native inhabitants have no fixed occupancy in, nor mix their labours with the lands; and where there is no established known form of government, or communion uniting into a collective body, the several individual natives, and as such, having

ing a fixed and actual occupancy of possession. This is the very ground and basis, on which stands our right of possession, in almost all our settlements in America, and on the coasts of Africa.

This is the case of all those settlements and landed possessions, where a municipal inhabitancy, from the acquiescence of the powers of the country, hath by degrees grown into a territorial possession.

- This state of landed possession and territorial property acquired and held under the privileges and powers above described; and made, and settled, *in partibus exteris* within the bounds prescribed, is the first stage or process of the settlement of colonies; and even if the colonists thus holding their possessions do not, *by petition in that behalf made*, pray for territorial grants of the same. or, if the crown does not of its own mere motion, interpose and make such grants, and erect these colonies or settlements into provinces; yet the property of the possession is good and valid in the colonists against all claimants whatever, and against the crown with the reservation as above.

But in the history of our colonies and plantations, precedents exist almost universally—either of the crown's interposition of its own mere motion and grace, by erecting these colonies or plantations into provinces, in which case
it

it always makes territorial grants of the lands : or of the colonists first moving, and claiming such grants, *by petition in that behalf made* ; in which case the crown recites the petition, and makes it the ground and basis of the grant.

The Rhode Island charter recites, that “ the
“ original colonists did transplant themselves
“ to the country of the Indians, and did there
“ settle, add have increased and prospered ; and
“ are seized and possessed, by purchase, and con-
“ sent of the said natives, to their full content,
“ of the lands, island, rivers, &c. &c. which they
“ specify ; and therefore they pray a grant of
“ the same from the crown.”—The crown, in the charter, recites this claim of right, and makes out territorial grants of the same.

The settlers in the colony of Connecticut, who had gone out with all the powers above particularly recited, applying for territorial grants, state their rights of possession by saying, that the greatest part of the colony was purchased and obtained, for great and valuable considerations, and *some other parts gained by conquest*. They therefore pray for territorial grants of the same, *by petition in that behalf made*. The crown recites the petition, and makes it the ground and basis of the grant. Although, therefore, the East India company do possess in full right, so far as to bar all claims against them, a property in all their forts, settlements, factories, plantations ; yet they may if they think fit,

fit, by petition in that behalf made, claim territorial grants of these possessions as of right. And the crown is (as should appear from the like case) bound *to make all such further grants, as may be lawfully made, and as shall be reasonably advised*;—for so I understand the covenant in the charter of King William engaging to make further grants of all such matters *and things*, as may be lawfully granted—so, I say, I understand it, when in context with the tenor of all the former grants to the company; and when compared, by analogy, with all other grants of the like nature to colonists.

On the other hand, the crown, should it see cause, “*and be reasonably advised*,” may, of its own motion, interpose, and erect those colonies, settlements, factories or plantations, into a province or provinces: yet such interposition would in no wise impeach or alter the company’s right of property, in the possessions above referred to. The crown, in the constitution and terms of such, will, as of right, make territorial grants of that landed property. The right and the property would receive no alteration; the tenure, instead of being of an imperfect vague holding, would become thereby defined; would be united to the state, under the jurisdiction of the crown; would be holden of the crown.

As all acquisitions of territory and dominion *in partibus exteris* without the realm, until they are annexed to the crown, as dominions belonging

ing to the realm, may be disposed of and alienated by the king; the erecting such acquisitions or territory into provinces, annexing them to the crown as provinces of the realm, would make this material and essential change; namely, that they could never more, by the king, be put under any foreign jurisdiction; under any jurisdiction whatsoever which the law and the constitution of the kingdom did not authorize. They could never be alienated, ceded, or transferred to any other state whatsoever, by the king alone; could never be put out of the protection of the crown.

There is however a predicament of property, founded on a very different case, and leading to a very different conclusion. Where landed property (even within the bounds prescribed for making settlements under the privileges and powers as before) is expressly within the jurisdiction of some known and acknowledged state; is holden of that state; is holden as feuds, or in the form and by virtue of offices: there our crown can in no wise interpose in the property, is not competent to make grants of it, nor even to make regulations about it. It might as well assume a right and power to make a grant of, or regulations for the seigneury of the dukedom of Aubigny, because it is the property of an English subject; as to interpose in making grants of zimindarrees, jaghires, and such like holding of lands and territories, while the sovereignty under which these are holden remains intire.

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There is a third case of a very different description, and which leads to a very different consideration : it is this ; where the acquisitions of landed property, territories or dominions, whether made by purchase, treaty, or conquest, pass under these circumstances, namely, that the sovereignty of which they were held, is become vacant, or is transferred—there such acquisitions, whether made by the subject under powers granted by the crown, or by the crown immediately ; both as to property and dominion vest in the crown—as being and representing the active principle of that organized body the community.

In order rather to explain, than to prove this proposition, I will recur back to first principles, and by a deduction from thence of the process of this system, shew how the case arises in fact and right.

When any number of individuals associate, and form that communion which becomes the subject matter of government ; not only the individuals in their persons, but in their rights and property, are melted down into the common mass of the commonwealth. This commonwealth becomes A ONE ORGANIZED BODY, having a one principle of individuality.—The property in the lands and other immoveables, thus forming this common mass is, *primâ instantiâ*, in its primary and original derivation the property of the state ; unalienable and inseparable

parable from that state in any part thereof, but by the will of the whole state: it is an essential vital part of the organized living body. This property therefore must receive the mode of its existence, connexion, relation, and subordination; its use and application as a part; from the nature and organization of the whole.

From this theorem, which is simply the definition of the actual existing state of political communion, derive, by necessary concatenation of truth and right, the following propositions.

Whatever individual obtains possession, and becomes the particular proprietor of any part of such property already in the community, he must hold that possession, and be an individual proprietor in such mode, relation and subordination, to such extents of use and application only, as is primarily consistent with the vital union of the whole; and in the next place, conformable to the dispositions thereof made by the whole.

No individual can by sale, gift, or in any other manner transfer his property to any one who by possessing it can be supposed to separate or dis sever it from the community of the commonwealth.

Thus far of property, already part of the community of the commonwealth.

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On the other hand, "Every man" (says Mr. Lock) "when he at first incorporates himself
 " into any commonwealth, he, by his uniting
 " himself thereunto, annexes also and submits to
 " the community, those possessions which he
 " has, *or shall acquire, that do not already be-*
 " *long to any other government* : for it would
 " be a direct contradiction for any one to enter
 " into a society with others, for the securing
 " and regulating of property, and yet to sup-
 " pose his land, whose property is to be re-
 " gulated by the laws of the society, should be
 " exempt from the jurisdiction of the govern-
 " ment to which he himself, the proprietor of
 " the land, is a subject."

Hence it is, that if any individual, or any political person or body corporate, who is part of a community, obtains leave from that community to emigrate, in order to settle *in partibus exteris*, out of the limits of that community; yet acts, settles, and acquires property under the powers and privileges, and protection granted by that community; and does, in his personal individuality, still himself belong to that community; all property acquired by that person (which does not already belong to some other government, or which by any justifiable means is dislevered from the government it did belong to) all property, I say, so acquired by such person, does *ipso facto* become annexed to, as the property of, that community to which the individual himself belongs.

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This is truth and right in the abstract. Apply this right to fact in the constitution of our own government—and then the particular truth stands thus, that all acquisitions of territory made by the subjects of Great Britain *in partibus exteris*, whether by purchase, treaty, or conquest, if the lands of these territories are such as do not belong to any other government, or having belonged to any other government, are such that the sovereignty or dominion under which they were becomes vacant or is transferred, then both the possession of, and dominion over these lands vest in the crown, so as to be of the allegiance, and what must be holden of the crown. Let us view this truth, which we may now call matter of law—in the actual execution of it.—And first as to Africa: An act for vesting the fort of Senegal and its dependencies in the company of merchants trading to Africa (which passed in the year 1764) has these words.—“Whereas the fort of Senegal and its
 “dependencies were by the late treaty of peace
 “ceded to Great Britain, and are now subject
 “thereto; and whereas it would be of advantage to Great Britain, and to the trade to
 “Africa, if the said fort and its dependencies
 “were also vested in the said company, may
 “it therefore please your Majesty that it may
 “be enacted; and be it enacted by his most
 “excellent Majesty, by and with, &c. that from
 “and after the passing of this act, the fort of
 “Senegal and its dependencies shall be, and
 “the same and every part thereof are hereby
 “declared

“ declared to be vested in the company of
 “ merchants trading to Africa:”

Now this special act of investiture of these lands and territories was deemed and enacted as necessary notwithstanding they lay within the bounds; and are parcels of those territories and dominions on which the company had a right to settle, and which by special charter in 1672 had been granted to it, under the like general terms; as the power of settling and acquiring lands in the East Indies is given to the East India company.

See next the case of St. Helena, as deriving from this same maxim of law—in the words of the charter of confirmation to the governor and company of merchants trading to the East Indies, of the island of St. Helena, granted in the 25th year of the reign of king Charles the second.

“ Whereas in pursuance of our royal charter,
 “ the governor and company did at their own
 “ cost and charge, erect several forts and for-
 “ tifications at Sancta Helena, being an island
 “ situate in, or near Africa, beyond the line,
 “ and on this side the cape Bona Speranza, and
 “ place a garrison there, and were proceeding
 “ to plant and people the same, and for that
 “ purpose had transported divers of our subjects;
 “ who were willing thereunto, to inhabit there;
 “ but our said subjects, inhabiting on the said
 D 2 “ island,

“ island, were lately in time of war between us
 “ and the states of the United Provinces, by
 “ force of arms dispossessed thereof by the sub-
 “ jects and forces of the said states, and the
 “ subjects of the said states had and kept the
 “ quiet possession thereof for several months to-
 “ gether.—And whereas by the blessing of
 “ God on our royal ships and forces, under the
 “ command of Capt. Richard Maundane, the
 “ said island, and all and singular the forts,
 “ fortifications, and other the appurtenances
 “ thereunto belonging were retaken from the
 “ said states and their subjects, and a garrison
 “ of our subjects placed there, by virtue or rea-
 “ son whereof, the said island and all and sin-
 “ gular the forts, fortifications, erections and
 “ buildings thereof, with the appurtenances
 “ thereof *are vested in us, our heirs and suc-*
 “ *cessors*, in the right of our crown, and all the
 “ artillery, arms, armour, weapons, ordnance,
 “ munition, magazines, stores, chattles, and
 “ moveables whatsoever, which were there
 “ found at the time our said forces retook the
 “ same as aforesaid, do of right belong to us
 “ and no other.—And whereas the said
 “ island hath been found by experience to be
 “ very convenient and commodious to our
 “ loving subjects the governor and company of
 “ merchants trading to the East Indies, for the
 “ refreshment of their servants and people in
 “ their returns homeward, being then often
 “ weak and decayed in their health, by reason
 “ of those long voyages under those hot cli-
 “ mates ;

" mates; whereupon our said subjects, the said
 " governor and company, have besought us to
 " regrant and confirm the same to them.—
 " We therefore, of our special grace, certain
 " knowledge, and mere motion, have given,
 " granted, and confirmed, and by these pre-
 " sents for us, our heirs and successors, do give,
 " grant, and confirm to the said governor and
 " company, their successors and assigns, all that
 " the said island of Sancta Helena, &c. &c.
 " and them the said governor and company,
 " &c. we do by these presents for us, our
 " heirs and successors, make, create, and con-
 " stitute the true and absolute lords and proprie-
 " tors of the said island and premises, &c. Saving
 " and always reserving to us, our heirs and suc-
 " cessors, the faith and allegiance to us due and
 " belonging, and our royal power and sovereignty
 " of and over our subjects and inhabitants there."

Under the like predicaments, without any ma-
 terial difference, stood the case of Louisbourg; and
 of those places in the East Indies, which were re-
 taken by the joint forces of the crown and company.
 Louisbourg was given up and ceded at the peace
 of Aix-la-Chapelle. These East Indian territo-
 ries lye in the hands of the East India company.

See next the case of a cession of property with
 a transfer of sovereignty in the instance of the
 island of Bombay: the case is stated in the char-
 ter, relating to the island of Bombay, granted
 in the 20th year of the reign of Charles the 1st.

" Whereas

“Whereas by the late treaty, between our
 “good brother the king of Portugal, concluded
 “at Westminster, the 23d of June, 1661.—
 “the said king of Portugal did, by the eleventh
 “article thereof, by and with the advice and
 “consent of his counsel, freely, fully, absolutely,
 “and intirely, give, grant, transfer, and con-
 “firm unto us, our heirs, and successors, for
 “ever, the port and island of Bombay, in the
 “East Indies; together with all the rights,
 “profits, territories, and appurtenances thereof
 “whatsoever, and as well the property, as the
 “direct, full and absolute dominion and so-
 “vereignty of the same, &c. &c. which said
 “port and island of Bombay, and the territo-
 “ries thereof, lying and being within the
 “limits of our charter, granted to the governor,
 “and company of merchants, trading to the
 “East Indies: Now know ye, &c. We there-
 “fore, by the advice of our privy council, in all
 “the grants, matters and things herein con-
 “tained, of our special grace, certain know-
 “ledge, and mere motion, have given, granted,
 “transferred, and confirmed, and by these pre-
 “sents for us, our heirs and successors, do give,
 “grant, transfer, and confirm, &c.” The rest
 runs in the terms and words as above.

Any cession of any dominions or territories
 in the East Indies, whereby the sovereignty is
 transferred must in like manner vest in the crown,
 and should be (and I own, I think of right
 ought to be) granted to the company, if such
 territories

territories lie within the bounds and limits of their charter; according to the terms under which they already are empowered, to have and hold landed property in territories and dominions, holden of the crown, and of the allegiance of the crown with the reservations as before.

The case of territorial possessions acquired by conquest, whereby the former sovereignty hath been *abolished*, is still stronger—because no subject, either individual, or body corporate, going forth of the realm to settle and acquire lands, *in partibus exteris*, under powers granted by the crown, with reservation of supreme jurisdiction, dominion, and sovereignty, can possibly erect any sovereignty: or if any such sovereignty should arise, from a temporary necessity of exercising some government, can such sovereignty act, or even exist, but as the sovereignty of, or derived from the crown?

It is therefore both in fact and right, from the nature of political community in general; from the nature and spirit of our constitution in particular; true in law—that such possessions in land or territories so acquired, and the dominions over such, must and do vest in the crown not so vest in the crown, that the king becomes grand Seigneur and sole proprietor, to grant the same or not; to grant the same in such form, and on such tenure, as he shall will and please. But so far only, that while the political property (if I may so express myself) remains in
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the state; and therefore by our government in the crown; the personal property remains inviolate in the subject acquiring it, if acquired under such powers as before-mentioned. The personal property however, at the same time and for the same reasons, must in the mode of having and holding, in the dispositions and regulations of the form in which it should lie, in the conditions of its obligation and subordination to the whole, must derive from the nature of the political property vested in the crown, and must therefore derive from the crown,

In acquisitions thus made, under circumstances not specially provided for before—some act of the crown, representing the state, as was done in the cases of Bombay and St. Helena; or of the state itself, as in the case of Senegal; becomes (of right) necessary in order to fix the property in the company; the dominion and sovereignty in the crown: and in order to form the true and constitutional connexion between the two, under such modes of the one, and such bounds of the other, as the constitution of the company, deriving from and depending upon the constitution of the state, requires,

Let any one, by application of the reasoning above, to the three several cases before stated, consider the three several sorts of property which the East India company has acquired and possesses, and there can no difficulty arise in deciding, what government hath a right to do in each

each case, and what it ought to do upon the whole.

Thus far as to property. What government ought to do respecting dominion and sovereignty, requires further discussion and consideration.

When we learn, that nabob after nabob has been driven from the seat of government; that the new creatures of the East India company are seated on the musnud or throne, by the servants and deputies of the company; that the sovereigns of the country are content to receive their government from the hands of the company; that they govern under the protection, command, and by direction, of the company; by officers and ministers named by, and holding their offices at the will and pleasure of the company; that the company is in full receipt and possession, and hath the sole distribution of the revenues of the country; that they pay the officers and ministers, the nabobs, nay, even the Mogul himself, what the company estimates, rates, and judges to be proper; that the company is absolute landlord, and proprietor of the lands for ever; that it directs what military forces shall be deemed proper, and allots what part of that shall be put under the orders of the nabob or mogul--and what shall remain under its own immediate command: when we learn all this, and find it to be the actual state of the government of the country, who will doubt, whether the native sovereignty of the country be or be not abolished? Notwithstanding therefore the

farce of treaties, with the fiction of a nabob, the fact is, that the government of the country is dissolved, the sovereignty annihilated.

The affecting to be only the protector of the government of the country as an ally ; to be only the steward, not the landlord of the dominions of the state ; the executing the government of the country, under its own laws, so far as despotism admits law, and by the ministration of its own offices and officers, was one of those genuine strokes of politicks, which true and original genius alone always doth at once adopt and execute*. Nothing could be wiser, respecting the internal state of the country ; nothing more prudent, at the time, respecting foreign states ; and nothing better understood, for the then present occasion, respecting the relation between the company, and the supreme government of Great Britain. The hand of explanation, on the face of the clock, points to this ostensible system---but when we look into the internal springs and movements, when we read the minutes, and the secret and confidential correspondence†, or advert to the undisguised explanation of the system, we find the company stating themselves as sovereigns, having dominions and subjects‡ ; stating what sort of army is necessary “ *to preserve them sovereigns.*”

* Those who wish to see this ostensible measure explained in the true spirit of it, may read Lord Clive's letter, Sept. 21, 1765.

† See Report of Select Committee.

‡ See Lord Clive's letter to Mr. Rous, April 17, 1765.

We find then that powers and interests have arisen in the course of the existence of this company, which were not in contemplation at the first forming of it; of which there was not an idea; for which therefore there is not, nor could not be in the charter any provision. On the contrary, we find the Attorney, and Solicitor General, Mr. Pratt, and Mr. York, in the year 1757, are "of opinion, that it is not warranted by precedent, nor agreeable to sound policy, nor to the tenor of the charters which have been laid before us, to make a general grant not only of past, but of future contingent conquests, made upon any power, European or Indian, *to a trading company.*" And we further find, that in all grants of powers of government, the crown always reserves "the sovereign right, power and dominion to itself, its heirs and successors."

These powers, therefore, of sovereignty, (howsoever they may have fallen into the hands of the company, or in whatever form they may lie there) cannot be duly exercised by that company, without some legal and constitutional interposition of the crown; and in the words of the same lawyers in the same opinion, I draw the other part of the conclusion, that, "all those dominions, such as have been lately acquired, or shall hereafter be acquired by conquest, must all, both as to property as well as dominion, vest in the crown, by virtue of its own prerogative, and consequently the

" company can only derive a right to them
 " through his Majesty's grant." I beg here to
 repeat that I understand this in the sense only as
 above described—in the distinction between po-
 litical and personal property.

Under this distinction, I say, not only from
 the authority above, but from the authority of
 reason and demonstration, that it is not only ne-
 cessary respecting the property, but what the
 government ought to do of right respecting the
 due order of government---that it should make,
 in the case above described, territorial grants of
 the dominions, where such *may be lawfully*
granted, and as such shall be *reasonably advised*,
 according to the claim of right which the com-
 pany hath on one hand, and according to law
 and the constitution on the other.

The government must also either minister
 and execute these powers of sovereignty (thus
 reserved in the crown) by itself and its own
 officers and servants; or create and add to the
 powers of the charter a new office authorised to
 execute the powers and administer the rights
 which it may thus delegate.

I also who really think, from the experience
 of all times, from the time of Tyre and Sidon
 to the present, that the greatest evil arises "*when*
 "*traders become princes, and merchants so-*
 "*vereigns:*" and who, by deduction of experience
 in like cases, do not think that these powers
 and

and rights (to be held and exercised at the distance of the Indies) retained in the immediate hands of the crown will add such power and influence to the crown here as some apprehend and fear---do think it right, that the sovereignty and dominion should remain in the crown, to be executed by the crown, while the property and all the rights, privileges and franchises should be confirmed and more fully established in the company.

But in whatever hands these powers are to be vested, or however executed and administered, let us try and examine of what spirit they are, that we may from thence decide what ought to be the spirit of such administration.

Although the sovereignty of the native government of the country within the bounds of the dominion of the East India company is abolished and annihilated, yet the forms and orders, the offices, and ostensible officers of the government remain---the tenure of the lands remains as it did; the rents and revenues as they did;---the state of rights personal and political, the rule of government, such as they were; the sovereign power and direction however, the absolute military command, the absolute perpetuity of right in the revenues, the protection of that creature of the company, the ostensible sovereign, is held under a very jealous and exclusive power in the hands of the company:---Although it suffers the government to be exercised by the nominal

nominal officers of the state --- yet it is the holder of the state in its own hands.---This situation of the Indian state, and this establishment of the European STATE-HOLDER --- is the precise predicament of the case under consideration.

These circumstances of the state, and this establishment of the STATE-HOLDER, hath arisen from, and stands founded on various cessions and negociations, at various revolutions; upon the whole tenor of the treaties of peace which have been concluded on circumstances brought on by force of arms.

The precise state and predicament therefore of that sovereignty which hath thus arisen, and must *primâ instantiâ*, vest in the crown, is that of becoming STATE-HOLDER to a province, of which the government is left in its old form and state, and is still exercised upon its old rules of administration, and by its old officers of state and police.

Whether therefore the government keeps this power in its own hands, or delegates it into the hands of the East India company, if it acts *as what it is*, (which is the only rule of all moral and political action) it must act *as state-holder*---it must retain the sole and executive power and command of the army; it must preside with a certain degree of controule over the establishment and execution of the civil officers
of

of the state :---and, to this end, it must of right hold and possess, as it doth the revenues of the public: it must protect the dominions from without, and support the government in vigour and efficiency within, leaving to it all its own forms, rules, civil establishments, movements, and actions, free and intire. It becomes also, by its presiding and controlling power, the duty of this state-holder to protect and maintain the people in their persons and in their rights.---It must, as the primary cause for which it exists, also protect the East India company in all its property, its rights, privileges, and franchises.

If it were in the spirit of our government to take a precedent from the experience of history, I would wish to lay before them the conduct of old Rome towards Macedonia and Illyricum. I take it from the words of a decree of the senate, made upon an occasion such as the present case exhibits.——*Omnium primum liberos esse placebat Macedonas atque Illyrios, ut omnibus gentibus appareret, arma populi Romani, non liberis servitutem, sed contra SERVIENTIBUS LIBERTATEM AFFERRE; ut et in libertate gentes quæ essent, tutam eam sibi perpetuamque sub tutelâ populi Romani esse; & quæ sub regibus viverent, & in præsens tempus MITIORES EOS, JUSTIORESQUE respectu populi Romani habere se.* “It is resolved, in the first place,
 “ That the Macedonians be and continue free.
 “ That it may be known to all nations, that the
 “ Roman arms do not impose slavery upon free
 “ people :

“ people: but on the contrary afford and re-
 “ store liberty to those who have been reduced
 “ to slavery: that those nations who were and
 “ are in a state of freedom, may hold for the
 “ future that freedom, secure and perpetuated
 “ under the patronage of the Roman people:
 “ and that those who have lived under monarchs
 “ may from the present moment find those their
 “ masters, more just and more moderate thro’
 “ the respect with which they must look up
 “ to the spirit of Justice and moderation in the
 “ Roman people.” And accordingly when
 Paulus Æmilius, in consequence of this decree,
 established the Roman provinces in Greece—
Omnium primum liberos esse jubet Macedonas, ha-
bentes urbes easdem agrosque, utentes legibus suis,
annuos creantes magistratus; tributum, dimidium
eius quod pependissent regibus pendere populo
Romano. “ In the first place, by the power and
 “ authority of his command, he declared the
 “ Macedonians to be and confirmed them a free
 “ people, having and holding, in the same
 “ manner as they were accustomed, their civic
 “ rights and landed property; using and enjoy-
 “ ing the same laws, under the administration
 “ of magistrates created annually by themselves:
 “ and as to tax or tribute, paying but a half-
 “ subsidy to the Roman people, where they
 “ used to pay a whole one to their kings.”

Under such a spirit of dominion the subject
 state would remain, not by its will alone *obe-*
dient, but by its gratitude affectionately *attached*

to the sovereign state. It would remain in peace, because the sovereign state could have no motive for disturbing, but every interest in maintaining that peace. It would remain quiet and clear of all cabals, because no individual person nor no party could find its interest, but on the contrary, would risque every danger in forming such cabals; which cabals it would be the interest of the supreme state to crush in their first movements. A people in this situation would remain in a settled establishment, because they could have no motive for a change. The sovereign power of the supreme government would be fixed and permanent: the subject state would be established in peace and the full enjoyment of its rights and capacities. Under such circumstances of the community—whereby the individuals found themselves protected in their persons and insured in their property—where the community in general was under a certainty of freedom in the direction of its industry—in perfect liberty as to the disposal of its produce—sure of enjoying the profits of that produce—the genuine spirit of a landworking, manufacturing, trading people, operating in a fine climate on a rich country, would come forward in every effect of productive industry, and would become, to a commercial state that had the government and protection of it, an inexhaustible mine of true profit, deriving in an increasing influx of useful, not an overflowing deluge of destructive riches. The gradual accretion of money thus deriving, nurtures, and

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extends the industry; and forms and raises the powers of a nation: the latter plethorick influx becomes a disease, which, deranging the scale of proportion in all value, creates obstructions and conglomerated inequalities; breaks out in luxury among the great; in speculating tricking attempts in *making haste to be rich* amongst the middling traders, and in idleness and a total dissolution of all *principled* subordination in the body of the people. This false state of inflated health in the nation raises in the mind of government an insolent phantom of power, which is known to its neighbours to be weakness abroad, but which ends by corruption in tyranny at home.

Over and above that, it is thus our interest to form these external acquisitions into such establishments; justice calls for some such measure as this to be executed. Some such measure as this is the only atonement that the nation can make for the crimes which have been suffered, hitherto with impunity, to be committed by a part of it.

Since I wrote the foregoing, the government of this country hath adopted a measure perfectly suited to, and what might be so modelled as to become a basis of, the very measure recommended in this paper—It hath by act of parliament appointed and established a governor general, and four counsellors, in whom it hath vested all the power civil and military of the presidency of Fort William in Bengal; also the ordering, management, and government of all the

he territorial acquisitions and revenues in the kingdoms of Bengal, Bahir and Orissa; with a superintending and controlling power over the presidencies of Madras, Bombay, and Ben-coolen: With a supreme power of making war or peace, and also of making and issuing rules, ordinances and regulations for the good order and civil government of the settlement at Fort William in Bengal, and other factories and places subordinate, or to be subordinate thereto, and to sett, impose, and levy reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances, and regulations. In the same manner the king is impowered to establish a supreme court of judicature for the town of Calcutta, and *the factory* at Fort William, and the limits thereof and *factories* subordinate thereto.

I speak not here of this measure as it respects, and may respect, those places reduced to and become, in their establishment and polity, British communities—My reasoning only considers it as it respects the government of a predominant over a subordinate country, supposed however at the same time to retain its own internal constitutional polity. Viewing it in that light, I say, so far as this measure assumes a supreme, superintending, and controlling power, superinduced, *ab extra*, over, but not mixing with, or deranging the internal powers of, the laws of the country, or profaning (in the sense in which the people of that country conceive to be prophaning)

the national customs civil or religious : so far as it holds and duly collects *the public revenue*, by rules, though strict, yet fixed and known, and suited to the nature of the sources of that revenue, instead of collecting the fruit in a manner that has well nigh destroyed the tree. So far as it holds, wields and directs, in these subordinate countries, *the power of the sword* to the purposes of external protection and internal peace, to maintenance of the state of which it is the state-holder ; so far is it necessary, wise and beneficent. So far as the supreme judicature shall act as a *court remedial*, by the general principles of common justice, accommodated in their application to the customs under which the character of the people is formed, to the laws which form their civil morality, is conducted, and maintains this justice ascendant under the protection of the British government ; Thus far it may be made one of the greatest blessings which a reigning government, having political freedom within itself, can communicate to a people under its dominion : but if the administration of justice, and the executive power following it, doth or ever shall derange the grounds of the old national customs, or the spirit of their civil morality, or the orders and casts by which the people as a nation are divided and arranged, doth or ever shall interfere with, and cross upon the fundamental laws of the nation, it will tear up all law by the roots, and under the cruel delusion of justice, plant the most wicked of all despotism in the extreme.

If that *supreme treasury*, which must necessarily become the ultimate repository, as the reservoir of all the revenue, should, instead of suffering the fruit to grow by its natural process, instead of collecting it as only the *surplus* which the people can spare over and above what is necessary to the support of the labourer, to the maintenance of the stock of the manufacturer, and to the payment of the interest of money employed to conduct the trade and commerce of the whole, *should, under ignorance in this true policy, attempt to profit in the exertion of the vague, undescribing, inapplicable terms of the British municipal law, go to severe and extreme execution of Exchequer or Admiralty proceedings*, there is not a miserable wretch, whether rich or poor, who will not from that moment loose *all right and security both in his property and person*, all comfort, rest, and even hope in his existence,

If the governor general, council, or judges under any the like *wilful* or ignorant perversions, should ever extend the controlling and superintending power of the predominant state vested in them to persons and places, *which, though subordinate to their factories, are yet municipal in themselves*, by assuming to make rules, ordinances, and regulations, which, while they supercede the laws and customs of the subordinate community, cannot apply but in direct Despotism; *that supreme imperium which the British nation means to hold in the ascendant*

dant over the Indian government, will be the most transcendent curse of despotism. But if, on the contrary, according to the true intent and meaning of the British legislature; according to the spirit of the Roman precedent; the law establishing an ascendant government in Bengal, Bahar and Orissa, shall be so explained and amended, That while this government holds the sword, it exercises that power only by internal exertion in aid of the national government, or by protection against external violence. If, while as a real protector and judge, it gives remedy and relieves by equity the unavoidable hardships which strict law occasions; if, while it exercises this superceding, it leaves undisturbed and uninterrupted the national and custom and civil morality consequent thereupon: If, while it looks only to the collective revenue, it suffers the industry of the country to apply its labour in its own way, and suffers the Bee (if I may so express myself) to collect and store and possess its own honey in its own combs, until the state calls for that part which the hive can spare, and which doth and should go to the support of government. It will make the community productive in its labor, and happy in the enjoyment of the fruits of that labor. An ingenious, industrious, thrifty people, thus made happy, will in return be constantly producing, by a superlucration of profit in manufactures and commerce, a constantly increasing revenue, the source of abundant, permanent wealth and power to the state.

Nor

Nor is it of the last consideration to consider, that where justice and benevolence become the best policy, as it evidently does in this case of our Indian dependencies, there is nothing in which the actions of a great nation can approach so near to an all-gracious Providence, as in giving and dispensing such powers of government to a nation under its protection, as to make that people happy, from whom in wealth and power it derives all the fruits of that happiness.

That the British nation may feel disposed to do, and that the government of that nation may do what is at the same time for its honour and interest to do, that is, provide for the happiness of a meritorious people, who deserve every thing from it, and who absolutely depend upon it, is the fervent wish and prayer of him, whose zeal for the peace, liberty, and happiness of mankind at large, and not any party spirit, any views of interest or even vanity, hath led to write and publish this argument.

F I N I S.

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